



de maximis, inc.

186 Center Street
Suite 290
Clinton, NJ 08809
(908) 735-9315
(908) 735-2132 FAX

March 15, 2016

VIA ELECTRONIC & US MAIL

Ms. Jennifer LaPoma
ATTN: Lower Passaic River Remedial Project Manager
Emergency and Remedial Response Division
U.S. EPA, Region 2
290 Broadway, 20th Floor
New York, New York 10007

**Re: Monthly Progress Report No. 42 – February 2016
Lower Passaic River Study Area (LPRSA)
River Mile 10.9 Removal Action
CERCLA Docket No. 02-2012-2015**

Dear Ms. LaPoma:

de maximis, inc. is submitting this Monthly Progress Report for the above-captioned project on behalf of the Cooperating Parties Group (CPG) pursuant to the Administrative Settlement Agreement and Order on Consent for Removal Action (Settlement Agreement or AOC). The Progress Report satisfies the reporting requirements of Paragraph 28 of the River Mile (RM) 10.9 Settlement Agreement. The CPG has revised this Progress Report to address the Region's direction in its September 1, 2015 letter.

(a) Actions which have been taken to comply with this Settlement Agreement during the previous month.

Meetings/Conference Calls

- None

Correspondence

- On February 4, EPA Region 2 (Region 2) submitted correspondence to CPG clarifying the relationship and content of the RM 10.9 Removal Action Long Term Monitoring and Operation and Maintenance Plan (LTMP) to the draft RM 10.9 Removal Action Post-construction Monitoring (PCM) QAPP and requested that the CPG submit a LTMP.
- On February 10, CPG responded to Region 2's February 4 correspondence to Region 2 confirming its understanding to provide a separate LTMP with the PCM QAPP attached as an appendix.
- On February 11, Region 2 responded to CPG's February 10 correspondence and provided additional comments on the draft RM 10.9 Removal Action PCM QAPP.
- On February 12, CPG provided example RM 10.9 Removal Area pore water concentration calculations to Region 2.
- On February 15, CPG submitted the January 2016 Progress Report to Region 2.

Ms. J. LaPoma

RM 10.9 Removal Action - Progress Report No. 42 – February 2016

March 15, 2016

Page 2 of 4

- On February 22, CPG and Region 2 exchanged e-mails regarding the schedule to retrieve the SPME pore water samplers installed in the RM 10.9 Removal Area in March.

Work

- CPG revised the draft RM 10.9 Removal Action PCM QAPP in response to Region 2 comments.
- CPG initiated revision of the draft RM 10.9 Removal Action LTMP.
- CPG continued review of the 2015 RM 10.9 Post-Construction Bathymetry Survey data.
- CPG continued development of responses to Region 2 comments on the draft River Mile 10.9 Removal Action Final Construction Report.

(b) Results of Sampling and Tests

- None

(c) Work planned for the next two months with schedules relating to the overall project schedule for design completion and construction

- CPG will retrieve the SPME pore water samplers in mid-March weather permitting.
- CPG will evaluate and validate data from the pore water sampler SPME fiber analysis and sediment grab samples when received from the laboratory.
- CPG will continue to revise the draft RM 10.9 Removal Area LTMP that incorporates the PCM QAPP as an appendix.
- CPG will respond to Region 2 comments on the draft LTMP and draft PCM QAPP.
- CPG will complete processing of the 2015 RM 10.9 Post-Construction Bathymetry Survey data and prepare a data report.
- CPG will provide responses to Region 2 comments on the draft River Mile 10.9 Removal Action Final Construction Report to Region 2.

(d) Problems encountered and anticipated problems, actual or anticipated delays, and solutions developed and implemented to address actual or anticipated problems or delays

The CPG has agreed to retain only near-term problems and concerns in the monthly reports moving forward pursuant to the direction in Region 2's September 1 letter; however, previous Progress Reports through July 2015 document in Section (d) significant issues and matters largely the result of actions and decisions by the Region that have significantly delayed and complicated the completion of the RM 10.9 Removal Action. The removal of this previous information does not in any way lessen its impact on the completion of the RM 10.9 Removal Action.

Ms. J. LaPoma

RM 10.9 Removal Action - Progress Report No. 42 – February 2016

March 15, 2016

Page 3 of 4

- **Post-Construction Monitoring Plan** - The CPG attempted to install SPME pore water samplers into the RM 10.9 cap after receiving Region 2's conditional approval of the draft PCM QAPP on August 26 -27, 2015. The combination of armor stone, geotechnical fabric and accumulated sediment prevented the successful installation of pore water samplers at nine of ten locations identified in the PCM QAPP. CPG provided recommendations to Region 2 for installation of remaining pore water samplers on September 24 which the Region rejected. CPG provided a second set of alternative pore water sampling locations to Region 2 on October 12 based on land-side access to the RM 10.9 cap during lunar low tides. Although two of the three pore water samplers retrieved on October 27 were found to have been damaged during installation through the armor stone and geotextile cap layers, the laboratory was able to attain detection levels substantially lower than originally specified in the draft PCM QAPP. CPG recommended another attempt to install remaining pore water samplers during a December 9 – 11 day-time low tide pending resolution of sampler installation locations. Region 2 provided conditional approval of the draft PCM QAPP on December 8 based on revised installation locations. Installation of pore water samplers at seven (7) or the nine (9) remaining locations was completed. The CPG inquired on January 5, 2016 as to Region 2 approval of the revised draft PCM QAPP submitted on December 4 which was finalized after receipt of Region 2's revised sampling locations. Region 2 responded on January 6 that it was finalizing its review of the revised draft PCM QAPP. Minor comments on the draft PCM QAPP were provided by Region 2 on February 11.
- **Removal Action Final Construction Report** - Response to Region 2's comments on the draft River Mile 10.9 Removal Action Final Construction Report will be delayed pending resolution of the long-term cap sampling/monitoring issues and implementation of a feasible chemical monitoring method. The CPG does take exception and does not agree to the Region's comments directing the CPG to remove text related to implementability and feasibility that were included in the draft report.

Two significant issues remained unresolved and need to be satisfactorily addressed by the Region:

- **Tierra/Maxus/Occidental (TMO) UAO** - There is still no satisfactory resolution concerning the Tierra/Maxus/Occidental (TMO) participation at RM 10.9. The Region has failed to require the TMO parties to participate in a significant and substantive degree that is commensurate with their obligation. As documented in the CPG's correspondence of July 27, 2012 and September 7, 2012, the offer from TMO was inadequate and provided no meaningful value to the RM 10.9 Removal Action. Subsequent requirements directed by the Region such as a utility survey of the 0.5 acre no dredge zone are inconsistent with TMO's responsibility.
- **RM 10.9 Force Majeure – June 2013** - The CPG strongly disagrees with the Region's July 15, 2013 letter denying the Force Majeure condition outlined in CPG's June 29, 2013 letter. CPG addressed this issue in its July 31, 2013 letter to which the Region has never

Ms. J. LaPoma

RM 10.9 Removal Action - Progress Report No. 42 – February 2016

March 15, 2016

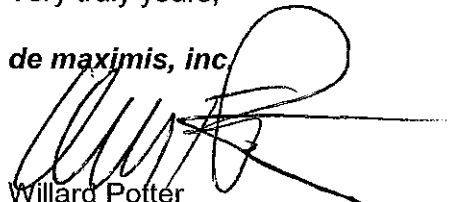
Page 4 of 4

responded. EPA's rationale for denial was inconsistent with terms and definitions in the RM 10.9 AOC. Both the inoperability of the Bridge Street Bridge due to Hurricane Sandy and the repeated delays in the repaired motors being shipped and reinstalled - were clearly beyond the control of the CPG. Moreover, Hudson and Essex Counties failed to meet their obligations under Federal Regulations to properly maintain and operate their bridges and to provide proper notice of the status of their bridges to US Coast Guard, mariners and the general public. As noted above it is the Counties obligation to ensure that their bridges are operable and ready to open upon notice. Finally, the CPG voluntarily provided funds to the Counties to operate the bridges with no regulatory requirement to do so.

If you have any questions, please contact Rob Law or me at (908) 735-9315.

Very truly yours,

de maximis, inc.



Willard Potter
CPG Project Coordinator

cc: Stephanie Vaughn, EPA Region 2
Christopher Jimenez, EPA Region 2
Sarah Flanagan, EPA Region 2 Office of Regional Counsel
William Hyatt, CPG Coordinating Counsel
Jay Nickerson, NJDEP
David Marabello, CDM-Smith
Scott Kirchner, CDM-Smith
Elizabeth Franklin, US Army Corps of Engineers
Reyhan Mehran, NOAA
Clay Stern, FWS
Doug Simmons, AECOM